IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Stephane Cayla, et al.	§	Art Unit:	2617
		§		
Serial No.:	10/810,507	§	Confirmation No.:	8147
		§		
Filed:	March 26, 2004	§	Examiner:	Jean Alland Gelin
		§		
For:	A Radio Telecommunications	§	Atty. Dkt. No.:	BGC.0002US
	System and method of	§		(15777FRUS02U)
	Operating the Same with	§		
	Polling	§		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

<u>PRE-APPEAL BRIEF REQUEST FOR REVIEW</u>

Dear Sir:

It is respectfully submitted that the obviousness rejection of independent claim 1 over Haartsen in view of Riihinen is clearly defective.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as held by the U.S. Supreme Court, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

The Office Action conceded that Haartsen fails to disclose "means for transmitting polling messages to the user equipment to request that the user equipment acknowledges receipt of the second data blocks." 12/3/2008 Office Action at 3. Instead, the Office Action cited Riihinen as purportedly disclosing the claimed feature missing from Haartsen.

The concession that Haartsen fails to disclose means for transmitting **polling messages** as recited in claim 1 is necessarily a concession that Haartsen also fails to disclose the last "means element" of claim 1, namely:

means for dynamically setting a polling interval for the transmission of **the polling messages** to the user equipment after transmission of the second data blocks, the polling interval being set in accordance with at least one of: a size of one or more data blocks received by the apparatus from the user equipment, a size of one or more blocks transmitted from the apparatus to the user equipment, and a service to which the user equipment is subscribed.

The Office Action erred in stating that Haartsen discloses the "means for dynamically setting a polling interval" element of claim 1. Although column 7, lines 25-41, of Haartsen refers to a master dynamically adjusting the polling interval of slaves, the polling intervals that are dynamically adjusted are polling intervals for polling messages sent from a master to a slave to give the slave permission to send data as part of a scheduling protocol. See Haartsen, 8:67-9:4 ("The master has . . . complete control over which slave can send information because a slave cannot transmit unless it is polled in a preceding slot."). Thus, the polling intervals dynamically adjusted in Haartsen are **not** polling intervals for transmission of polling messages to user equipment to request that the user equipment **acknowledges receipt of second data blocks**.

In view of this mis-application of Haartsen to the claimed subject matter, the obviousness rejection is defective for at least the reason that the hypothetical combination of Haartsen and Riihinen would not have disclosed or hinted at the claimed subject matter.

Moreover, no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Haartsen and Riihinen. As purportedly disclosing the "polling messages" of claim 1, the Office Action cited to column 2, line 54 – column 3, line 34 of Riihinen that describes using a STAT message that is a selective acknowledgement message that can advise of gaps in one or more segments in a reception buffer. Riihinen, 3:8-12. The cited passage of Riihinen refers to Fig. 13A of Riihinen, which shows communication between a transmitter and a receiver, where segments S1, S2, S3, etc., are sent from the transmitter to the receiver. Fig. 13A of Riihinen also shows a message STAT(S2) sent from the receiver to the transmitter to indicate that segment S2 is missing. The sending of the STAT (S2) message is triggered by the receiver noticing that segment S2 is missing.

However, the teachings of Riihinen relating to using an acknowledgement message to identify which segments are missing is completely unrelated to the context of Haartsen, in which polling messages that are periodically sent by a master to a slave is for the purpose of giving the slave permission to send data as part of a scheduling protocol. A slave is polled **even if it has no**

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data to send. *See* Riihinen, 9:4-7 ("If the master has no information to send to the slave, it is preferable for the master still to occasionally poll the slave for the purpose of finding out whether the slave has information to send."). Thus, Haartsen is completely unrelated to sending polling messages to request that a user equipment acknowledge receipt of data blocks sent to the user equipment. In fact, the concept of acknowledgment is completely irrelevant in Haartsen, since the master polls the slave to cause the slave to send data to the master, as part of the scheduling protocol of Haartsen. Since the master has asked the slave to send the data, it would be completely unnecessary, and in fact, wasteful of bandwidth resources, for the slave to send acknowledgments.

In view of the fact that a person of ordinary skill in the art would have recognized that there would have been no reason whatsoever to incorporate the acknowledgement mechanism of Riihinen into the Haartsen system, it is respectfully submitted that this person of ordinary skill in the art would not have been prompted to combine the teachings of Haartsen and Riihinen to achieve the claimed subject matter.

Therefore, the obviousness rejection of claim 1 over Haartsen and Riihinen is clearly erroneous.

Independent claims 13 and 15 are similarly allowable over Haartsen and Riihinen.

Dependent claims are allowable for at least the same reasons as corresponding independent claims. In view of the defective obviousness rejection of base claims over Haartsen and Riihinen, it is respectfully submitted that the obviousness rejection of dependent claims over Haartsen, Riihinen, and Schoch is also defective.

In view of the foregoing, withdrawal of the final rejection and allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 14-1315 (15777FRUS02U).

Respectfully submitted,

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